87-1811

Supreme Court, U.S.
FILED
JAN 27 1988
JOSEPH F. SPANIOL, JR.
CLERK

NO. _____

IN THE UNITED STATES SUPREME COURT

OCTOBER TERM, 1987

MICHAEL ALAN LAU and
BRUCE TAYLOR,

Petitioners,

v.

UNITED STATES OF AMERICA,

Respondent.

APPENDIX
TO PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS,
FIRST CIRCUIT

ROBERT AUGUSTUS HARPER
131 North Gadsden Street
Post Office Box 10132
Tallahassee, FL 32302-0132
(904) 224-5900

Counsel for Petitioners

TABLE OF CONTENTS

Description		Page
I.	Portions of the Record Necessary to Show Proper and Timely Raising of Federal Questions	1
II.	Opinions of the Lower Court	5
	A. United States Court of Appeals for the First Circuit - Opinion 09-15-87	5
	B. United States Court of Appeals for the First Circuit - Order on Rehearing 10-29-87	27
	C. United States Court of Appeals for the First Circuit - Judgments/Mandates 11-09-87	29
III.	Judgments Sought to be Reviewed	37
	A. United States District Court for the District of Puerto Rico (Lau)	37
	B. United States District Court for the District of Puerto Rico (Taylor)	40

I. RECORD SHOWING PROPER AND TIMELY RAISING OF FEDERAL QUESTIONS:

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA	*	
vs	*	Criminal Case
MICHAEL ALAN LAU and	*	No. 85-321 (PG)
BRUCE TAYLOR	*	

FIFTH DAY OF JURY TRIAL

The above-captioned case came to be heard before the HONORABLE JUAN M. PEREZ-GIMENEZ, United States District Court Judge, sitting at San Juan, Puerto Rico, on December 16, 1985 at 9:00 a.m.

FERNANDO ALTAMIRANO, Official Court Reporter
P. O. Box 383, San Juan, P.R. 00902
722-2003, 722-1553

P R O C E E D I N G S

THE COURT: Are the parties ready?

MR. BAZAN: The government is ready, Your Honor.

MR. CAMPER: We are ready.
[Counsel for Lau]

MR. TAYLOR: We are ready, Your Honor.
[Counsel for Taylor]

THE COURT: Bring the jury in.

MR. BAZAN: Your Honor, before the jury is brought in I want to inform that the government intends to present evidence of prior similar acts.

If counsel for defendants have any objection to it, or any objection at all, I think it should be discussed right now before the jury comes in.

MR. TAYLOR: It is our position that at this point in time it certainly is questionable as to whether or not 404(b) will come in, in light of the evidence that is being presented today, and I think the appropriate procedure would be a proffer, either through the witness, what evidence he's expected to introduce, so that this Court can

make a determination of whether it is proper of anything in this particular case.

And of course, whether it would be prejudicial under the normal standards.

I think if the Court, from having reviewed the statements of the witnesses I would suggest most respectfully that Mr. Bazan have the burden of going forth and showing by clear and convincing evidence that supposedly an offense

426

occurred and that either or both of the defendants admitted that offense and if he cannot get past that standard we don't even get to the second issue, whether it is proper or prejudicial.

And, of course, if it is presented to the jury and the Court does not allow it after hearing it, well, that is -- I am suggesting that because of the nature of the allegations a curative instruction will be totally insufficient and too late, and we possibly will find ourselves in a mistrial posture.

So therefore, I would request that a proffer be made to the Court outside the presence of the jury. I think that would be the most safe course.

THE COURT: Mr. Camper?

MR. CAMPER: Same motion, Your Honor.

II. OPINIONS OF THE LOWER COURT:

A.

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIRST CIRCUIT

No. 86-1255 UNITED STATES OF AMERICA,
No. 86-2008

Appellee,

v.

MICHAEL ALAN LAU,

Defendant, Appellant.

No. 86-1256 UNITED STATES OF AMERICA,
No. 86-2002

Appellee,

v.

BRUCE TAYLOR,

Defendant, Appellant.

APPEALS FROM THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF PUERTO RICO

Hon. Juan M. Perez-Gimenez

U. S. District Judge

Before

Breyer and Selya, Circuit Judges,

and Re,* Judge.

William L. Camper for appellant Michael Alan Lau.

Clyde M. Taylor, Jr. for appellant Bruce Taylor.

Antonio R. Bazan, Assistant United States Attorney, with whom Daniel F. Lopez Romo, United States Attorney, was on brief for appellee.

September 15, 1987

---

*Chief Judge of the United States Court of International Trade, sitting by designation.

BREYER, Circuit Judge. The appellants, Michael Lau and Bruce Taylor, appeal their convictions for importing and possessing cocaine and for conspiring to do so. 21 U.S.C. §§ 841(a)(1), 846, 942(a). They claim that there was insufficient evidence for conviction; they make several claims relating to a DEA informant's testimony about their participation in an earlier cocaine smuggling scheme; and they ask for a new trial because they say the government withheld exculpatory evidence. We do not believe their arguments are legally sufficient, and we affirm their convictions.

I

Appellants' first claim is that there was insufficient evidence for conviction. A reading of the record, with inferences appropriately drawn in the government's favor, see United States v. Drougas, 748 F.2d 8, 15 (1st Cir. 1984); United States v. Patterson, 644 F.2d 890, 893 (1st Cir. 1981), indicates the following basic series of events:

1. In the morning of August 9, 1985, appellant Michael Lau, president of St. Maartin Helicopter Service, landed his helicopter in St. Croix, Virgin Islands. He falsely told a United States customs officer that he was traveling on to San Juan, Puerto Rico, with only one passenger and that the senior inspector of U.S. customs in St. Croix had said it was all right to "pre-clear" the flight, that is, to grant U.S. customs clearance in St. Croix instead of San Juan. The customs officer then pre-cleared Lau without inspecting the helicopter. (Tr. 259, 262-63, 266-68)

2. Later that day, Lau landed his helicopter in San Juan. Lau, an elderly man, and another man in a wheelchair all got off the helicopter. (Tr. 196) Lau and the elderly man unloaded several suitcases from the helicopter and "left them between two vehicles." (Tr. 336-37) The elderly man and the man in the wheelchair then approached appellant Taylor, a partner in Lau's helicopter company, who was standing nearby awaiting the helicopter's landing. (Tr. 339)

3. Gus Maestrales, a charter jet pilot whom Lau had hired to fly his passengers from San Juan to Orlando, asked Taylor, the elderly man, and the man in the wheelchair if they had any luggage except the few bags they were carrying. They said, "[N]o, we've got more bags over there," and pointed to six suitcases "over by a vehicle." Maestrales' co-pilot complained that the six suitcases "weigh[ed] a ton." (Tr. 194-96)

4. Maestrales, who was perhaps especially cautious because authorities had found $5 million aboard his jet the previous March (Tr. 216-17), thought the bags were suspiciously heavy and asked about their contents. Taylor said, "We don't have anything in there." (Tr. 198) Later, when Maestrales insisted on being shown the contents of the bags, Taylor said they belonged to a man who had not come on the helicopter. He added, "[T]hey are not mine. We don't want you to take them, just leave the bags." (Tr. 202) Maestrales found a customs official, who watched as Maestrales opened one of the bags. Inside was cocaine. (Tr.

203-5) In all, the six suitcases held 193 pounds of cocaine. (Tr. 322)

5. By the time the cocaine was discovered, however, Taylor and the man in the wheelchair had disappeared. (Tr. 277, 416) Two witnesses said they saw Taylor pushing the man in the wheelchair quickly toward the street. (Tr. 341, 354) One of them found the wheelchair abandoned under an airport stairway. (Tr. 342) Another witness, who refueled Lau's helicopter after the bags were unloaded, testified that Lau appeared nervous and in a hurry; his hands were shaking, and "[h]e was dying for the plane to be serviced." As soon as customs cleared Lau to take off, he left. (Tr. 386-88)

The case essentially turned on whether the jury believed that Lau and Taylor knew about the cocaine in the six suitcases or whether its presence there was an unfortunate coincidence. The jury apparently concluded that the presence of the suitcases was no coincidence. We think the facts outlined above -- even without the prior

acts testimony we discuss below -- are more than "sufficient to allow a reasonable juror to find guilt beyond a reasonable doubt." United States v. Guerrero-Guerrero, 776 F.2d 1071, 1073 (1st Cir. 1985) (noting that our system looks to jurors "to come up with answers that reflect the common-sense view of the community"), cert. denied sub nom. Mosquera v. United States, 106 S.Ct. 1233 (1986).

II

The major issues on appeal concern an additional piece of evidence. The government presented the testimony of Thomas Aiello, who said that about two and one-half years before the events described above, in January 1983, he had worked with appellants in a cocaine smuggling venture. Aiello said that he and Taylor and others had met a plane that Lau had flown into Broxton, Georgia. He helped unload from the plane a number of boxes that proved to contain 50 to 60 "football shapes" of cocaine. (Tr. 502-05, 508-10)

Appellants make three separate claims in relation to this evidence. First, they say that Federal Rules of Evidence 404(b) bars this evidence of a prior bad act because it is relevant only to show appellants' bad character. Second, they say the trial judge should have excluded the evidence because the government offered insufficient proof that appellants were the men Aiello saw in Georgia. Third, they say they had insufficient notice of Aiello's testimony. We consider each claim in turn.

A

Since Aiello's testimony amounts to evidence of a prior bad act, it "is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident." Fed. R. Evid. 404(b). The trial court must consider whether the evidence has any "special" purpose other than to show the

defendant's bad character or his propensity to commit the crime. Then it must weigh any such probative value against the prejudicial risk that the jury will convict the defendant simply in order to punish him for his past crime or will assume that a past criminal is a bad person likely to strike again. See United States v. Moccia, 681 F.2d 61, 63 (1st Cir. 1982). The law commits this balancing process in the first instance to the trial court, which is more directly familiar than a court of appeals with the need for the evidence and its likely effect on the jury. See United States v. Rivera Rodriguez, 808 F.2d 886, 888 (1st Cir. 1986); United States v. Fosher, 568 F.2d 207, 212-13 (1st Cir. 1978).

Appellants say that the Broxton incident's probative value depended upon an impermissible inference, namely that, because appellants smuggled drugs before, they would likely do so again. In our view, however, the jury might have made use of the evidence without drawing this inference. For one thing, the jury had to decide

which of three persons aboard the helicopter (Lau, the old man, and/or the man in the wheelchair) likely smuggled the cocaine. The jury might have noted similarities between the August 9 incident and the Broxton incident. These included (1) the presence of a large amount of cocaine; (2) Lau's acting as pilot; and (3) Taylor's being present to receive the cocaine. In addition, although there is no evidence in the transcript about the shape of the cocaine packets seized in San Juan, samples of those packets were before the jury, and the prosecutor implied in closing argument that they, like the packets Aiello saw in Georgia, were football shaped. (Tr. 633) These similarities might have helped the jury to infer that the persons who smuggled cocaine into San Juan were the same as those who smuggled cocaine into Broxton.

For another thing (and more importantly), the the jury had to conclude that Lau and Taylor were not the innocent dupes of a calculating smuggler who hired them, without their knowledge, to ferry him and his drug shipment into the States and who

then, somehow, convinced Lau to lie to a St. Croix customs officer. The fact that Lau and Taylor were knowledgeable about cocaine, that they probably knew first hand what it weighed and had some sense of how it was smuggled, suggests that Lau (like Maestrales) might have become suspicious (if he in fact were innocent) after he was asked to take several heavy suitcases on his helicopter and to make false statements to the St. Croix customs officer. A "knowledgeable" Lau's apparent lack of suspicion makes an innocent explanation of his actions (and hence of his partner Taylor's actions) less plausible. Similarly, Lau's and Taylor's prior contact with cocaine suggests that they knew hat Maestrales was concerned about from the time he first voiced his suspicions; and this fact, in turn, makes a totally naive explanation of Lau's and Taylor's subsequent actions less plausible. To refute such innocent or naive explanations of the appellants' behavior does not automatically prove appellants' guilt, but it

helps draw tighter the circumstantial net convicting them.

We need not decide whether either of these two sets of inferences, standing alone, would justify the admission of this prior bad act evidence. Cf. United States v. Pisari, 636 F.2d 855, 858-59 (1st Cir. 1981) (holding that evidence of prior bad acts, if admitted solely to prove identity, must show "distinctive" similarities with the offense at bar). Together, however, we believe they have sufficient probative value to bring the probity-versus-prejudice balance within the scope of the district court's lawful powers.

B

Appellants argue that the trial judge should have excluded evidence of the Broxton incident for a different reason, namely that the government did not adequately show that they were participants in the earlier smuggling event. Of course, if Aiello misidentified Lau and Taylor, then his evidence has no probative value at all.

Before admitting Aiello's testimony, the district court held a hearing focusing upon identification outside of the jury's presence. The appellants raised the question of identification again before the jury. After reviewing the transcripts of both proceedings, we believe that the identification, legally speaking, was sufficiently certain to support admission of the evidence.

Several factors weigh in favor of a correct identification. First, Aiello twice confidently identified Lau and Taylor in open court, both before the judge and before the jury. (Tr. 444, 501, 505) Second, Aiello had adequate opportunity to observe Lau and Taylor at the time of the Broxton incident. Before the plane landed at Broxton, he had met Lau (to give him a check), and he had gone with Taylor to inspect the landing strip. After the plane landed, he was with them for several hours. (Tr. 500-07) Cf. Manson v. Brathwaite, 432 U.S. 98, 114 (1977) (holding identification reliable where witness had two to

three minutes to observe defendant); Simmons v. United States, 390 U.S. 377, 385 (1968) (five minutes); Judd v. Vose, 813 F.2d 494, 499 (1st Cir. 1987) (three to five minutes); United States v. Eatherton, 519 F.2d 603, 609 (1st Cir.) (one minute), cert. denied, 423 U.S. 987 (1975). Third, some corroboration exists in the facts that Lau has a licence to fly the type of plane used at Broxton (Tr. 583), that Taylor was nearby in Alabama at the time (Tr. 602, 607), and that Aiello consistently used the appellants' correct first names from the time that he first described the Broxton incident to drug enforcement agents. (Tr. 468)

Several other factors, however, weigh against a correct identification. First, Aiello, in statements made soon after Broxton, incorrectly said that Lau and Taylor were about 5'8" and 5'9" tall (in fact they are about 5'11" and 6'4"); and he may have incorrectly said that Lau was clean shaven (he usually wears a beard and mustache). (Tr. 432, 455-56, 515-16, 580) Second,

considerable time elapsed between the Broxton incident and the time that Aiello positively identified photographs of Taylor (more than one year) and Lau (more than two years). (Tr. 471-72, 474) But see United States v. Drougas, 748 F.2d at 28 (five-year lapse between incident and identification does not necessarily render identification unreliable). Third, Aiello saw the defendants in court a few days before he identified them to the judge. (Tr. 456-58)

In addition to these sets of factors (pro an con), Aiello correctly identified defendants from a photo album that a DEA agent showed him sometime before the present time took place (i.e., before August 9, 1985). Several aspects of the photo identification process suggest that these identifications may have been accurate. (Tr. 470-86) For one thing, the DEA agent altogether showed Aiello between 23 and 41 photographs of several different people, some of whom Aiello identified as Broxton participants and others of whom he did not. Moreover, since Aiello picked out the

correct photos before August 9, 1985, the DEA could not have impermissibly encouraged him to identify Lau and Taylor with an eye towards prosecuting the present crime. Further, the DEA placed Lau's and Taylor's photos in the book only after having connected Lau and Taylor with a different person whom Aiello had positively identified from the beginning. (Tr. 469-70) On the other hand, the DEA agent had shown Aiello roughly the same display of photos (except for those of Lau and Taylor) at least once (and perhaps several times) before the agent placed Lau's and Taylor's photos in the book; thus, the other photos among which Lau's and Taylor's appeared were not new to Aiello. Moreover, the DEA agent placed not one but three pictures of Lau in the book at the time that Aiello identified him, thus, at least arguably, further increasing the risk of a false identification.

On balance, we think the pre-August 9 photo identifications sufficient to eliminate any negative implication which appellants might

otherwise draw from Aiello's having seen the defendants in court a few days before he identified them. Apart from that, we do not think it can be used to significantly strengthen the in-court identification; the procedure is too seriously flawed. See Simmons v. United States, 390 U.S. at 383-84 (police should avoid emphasizing picture of suspect in photographic identification); United States v. Eatherton, 519 F.2d at 608 (police should avoid repeatedly showing same picture to witness). But neither was the photo identification procedure so open to DEA "suggestion" as to undercut the reliability of the later in-court identification. After all, Aiello had no problem stating that he did not recognize many of the other persons whose photographs the DEA agent showed him under the same procedure.

Leaving the photo identification to one side, the in-court identification, in our view, is sufficiently reliable (despite the inconsistency about defendants' heights) as to permit the district court to allow the jury to hear Aiello's

testimony. See Simmons v. United States, 390 U.S. at 384 (given opportunity to cross-examine witness, "convictions based on eyewitness identification at trial . . . will be set aside . . . only if the photographic identification procedure was so impermissibly suggestive as to give rise to a very substantial likelihood of irreparable misidentification"); Judd v. Vose, 813 F.2d at 498-99; Gullick v. Perrin, 669 F.2d 1, 5-6 (1st Cir. 1981). And, the evidence is sufficiently probative (as set out in Part IIA, supra), that the district court possessed the legal power to admit it. Although the appellants argue that the identification evidence was not "clear and convincing," see United States v. Mascio, 774 F.2d 219, 223 (7th Cir. 1985); United States v. McDaniel, 773 F.2d 242, 247 (8th Cir. 1985), we note that this circuit has not laid down a separate mechanical evidentiary test for "past bad act" identification. Rather, the strength of the evidence linking defendants to a past bad act is but one consideration that the district court must

take into account when weighing its "probative value" against its "prejudicial risk." See United States v. Rivera Rodriguez, 808 F.2d at 888; United States v. Moccia, 681 F.2d at 63. Without expressing a view about whether the evidence here is or is not "clear and convincing," we conclude, on balance, that its probative value is sufficient to bring the question of admissibility within the scope of the trial court's lawful decisionmaking authority.

C

Appellants also claim that despite their timely request that the government disclose its intention to offer 404(b) evidence, the government failed to notify them of Aiello's testimony until December 3, 1985, six days before trial, and that even then the government misspelled Aiello's name. On the day of trial, the district court refused appellants' request for a continuance of 30 days or of 7 days in order to respond to the evidence, but it granted a one-day continuance over a long weekend. A court of appeals will not find that

this kind of decision constitutes reversible error unless a defendant can show abuse of discretion resulting in serious prejudice. See United States v. Jimenez-Diaz, 659 F.2d 562, 567 (5th Cir. 181), cert. denied sub nom Salazar v. United States, 456 U.S. 907 (1982). Appellants have failed to identify any evidence that they might have found with a longer continuance, - or to explain satisfactorily how otherwise they were prejudiced. We therefore find no reversible error.

III

Finally, appellants claim that, despite specific requests for exculpatory evidence, including "written or recorded statements" of appellant Taylor, the government failed to turn over tapes of two conversations between Taylor and two government agents made in connection with another investigation. Both conversations -- which occurred in April 1982, before the January 1983 Broxton incident -- concern an airplane that Taylor owned together with his brother and his brother-in-law. Appellants say that in one of

these conversations, Taylor said he suspected that someone was using the plane to transport drugs, that he strongly opposed any drug daling, and that he had told the FBI that the plane had been stolen.

Appellants say that the government's failure to produce these tapes violated the disclosure rule of Brady v. Maryland, 373 U.S. 83 (1963); alternatively, they request a new trial based on the discovery of this new evidence, see Fed. R. Crim. P. 33. To show a Brady violation, however, appellants must demonstrate that the allegedly suppressed evidence was "favorable" to them and "material" to guilt. Brady v. Maryland, 373 U.S. at 87. Similarly, discovery of new evidence merits a new trial only if the evidence is material and might have had some impact on the outcome of the trial. See In re United States, 565 F.2d 173, 176-77 (1st Cir. 1977). We do not think that the tapes in question meet these standards. For one thing, appellants have not explained how they could have admitted the tapes

into evidence. They amount to hearsay in respect to the truth of Taylor's statements. Fed. R. Evid. 801, 802. They could not be offered to impeach, since no trial witness speaks on the tapes. And, they could not be offered to prove Taylor's character, since the rules allow such proof only by reputation or opinion testimony. Fed. R. Evid. 405(a). For another think, and in any event, we do not see how the evidence of Taylor's professed attitude toward drugs in April 1982 (as it appeared on these tapes) could have swayed the jury's determination of events in January 1983, much less August 1985.

For these reasons, the judgment of the district court is

Affirmed.

B.

UNITED STATES COURT OF APPEALS

FOR THE FIRST CIRCUIT

Nov. 02, 1987

No. 86-1255
No. 86-2008

UNITED STATES,

Appellee,

v.

MICHAEL ALAN LAU,

Defendant, Appellant.

No. 86-1256
No. 86-2002

UNITED STATES,

Appellee,

v.

BRUCE TAYLOR,

Defendant, Appellant.

Before

CAMPBELL, Chief Judge

COFFIN, BOWNES, BREYER, TORRUELLA and SELYA,
Circuit Judges

and RE,* Judge.

ORDER OF COURT

Entered: October 29, 1987

The panel of judges that rendered the decision in these cases having voted to deny the petitions for rehearing and the suggestions for the holding of a rehearing en banc having been carefully considered by the judges of the Court in regular active service and a majority of said judges not having voted to order that the appeals be heard or reheard by the Court en banc,

It is ordered that both petitions for rehearing and both suggestions for rehearing en banc be hereby denied.

By the Court:

/S/ Francis P. Scigliano
Clerk

*Chief Judge of the United States Court of International Trade, sitting by designation.

[cc: Messrs. Camper, Taylor and Bazan]

C.

MANDATE

UNITED STATES COURT OF APPEALS

FOR THE FIRST CIRCUIT

No. 86-2008 UNITED STATES,

Appellee,

v.

MICHAEL ALAN LAU,

Defendant, Appellant.

JUDGMENT

Entered: September 15, 1987

This cause coming on to be heard on appeal from the United States District Court for the District of Puerto Rico, and was argued by counsel.

Upon consideration whereof, It is now here

ordered adjudged and decreed as follows: The judgment of the district court is affirmed.

By the Court:

Francis P. Scigliano

Clerk.

Certified and Issued

as informal mandate under

F.R.A.P. 41 on NOV 9 1987

FRANCIS P. SCIGLIANO
Clerk

By: /S/ Richard W. Gordon
Chief Deputy Clerk

[cc: Messrs. Camper, Bazan and Taylor]

MANDATE

UNITED STATES COURT OF APPEALS

FOR THE FIRST CIRCUIT

No. 86-2002 UNITED STATES,

Appellee,

v.

BRUCE TAYLOR,

Defendant, Appellant.

JUDGMENT

Entered: September 15, 1987

This cause coming on to be heard on appeal from the United States District Court for the District of Puerto Rico, and was argued by counsel.

Upon consideration whereof, It is now here

ordered adjudged and decreed as follows: The judgment of the district court is affirmed.

By the Court:

Francis P. Scigliano

Clerk.

Certified and Issued

as informal mandate under

F.R.A.P. 41 on NOV 9 1987

FRANCIS P. SCIGLIANO
Clerk

By: /S/ Richard W. Gordon
Chief Deputy Clerk

[cc: Messrs. Camper, Bazan and Taylor]

MANDATE

UNITED STATES COURT OF APPEALS

FOR THE FIRST CIRCUIT

No. 86-1255 UNITED STATES,

Appellee,

v.

MICHAEL ALAN LAU,

Defendant, Appellant.

JUDGMENT

Entered: September 15, 1987

This cause coming on to be heard on appeal from the United States District Court for the District of Puerto Rico, and was argued by counsel.

Upon consideration whereof, It is now here

ordered adjudged and decreed as follows: The judgment of the district court is affirmed.

By the Court:

Francis P. Scigliano

Clerk.

Certified and Issued

as informal mandate under

F.R.A.P. 41 on NOV 9 1987

FRANCIS P. SCIGLIANO
Clerk

By: /S/ Richard W. Gordon
Chief Deputy Clerk

[cc: Messrs. Camper, Bazan and Taylor]

MANDATE

UNITED STATES COURT OF APPEALS

FOR THE FIRST CIRCUIT

No. 86-1256 UNITED STATES,

Appellee,

v.

BRUCE TAYLOR,

Defendant, Appellant.

JUDGMENT

Entered: September 15, 1987

This cause coming on to be heard on appeal from the United States District Court for the District of Puerto Rico, and was argued by counsel.

Upon consideration whereof, It is now here ordered adjudged and decreed as follows: The judgment of the district court is affirmed.

By the Court:

Francis P. Scigliano

Clerk.

Certified and Issued

as informal mandate under

F.R.A.P. 41 on NOV 9 1987

FRANCIS P. SCIGLIANO
Clerk

By: /S/ Richard W. Gordon
Chief Deputy Clerk

III. JUDGMENTS SOUGHT TO BE REVIEWED:

A.

UNITED STATES DISTRICT COURT FOR

THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA vs.

DEFENDANT MICHAEL ALAN LAU

Docket No. Cr. 85-321-01 (PG)

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government the defendant appeared in person on this date March 07, 1986

X WITH COUNSEL William Camper and Carlos Lopez de Azua

There being a verdict of X GUILTY.

Defendant has been convicted as charged of the offense(s) of conspiracy to possess with intent to distribute cocaine, a Sch. II Narcotic Drug Controlled Substance, in violation of Title 21 USC § 846, 952(a), 841(a)(1) as charged in Count One; aid and

abet to import cocaine, a Sch. Narcotic, in violation of Title 18 USC § 2 and Title 21 USC § 952(a) as charged in Count Two of the indictment; and aid and abet in the possession with intent to distribute cocaine, a Sch. II Narcotic, in violation of Title 18 USC § 2 and Title 21 USC § 841(a) as charged in Count Three of the indictment.

The Court asked whether defendant had anything to say why judgment should not be announced. Because no sufficient cause to the contrary was shown or appeared to the Court the Court adjudged the defendant guilty as charged and convicted and ordered that The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of twenty years (20) in Count One and fined the sum of $20,000; for a period of twenty (20) years in Count Two and fined the sum of $20,000; and for a period of fifteen (15)

years in Count Three and fined the sum of $20,000. Only the imprisonment terms imposed in Counts One and Two are to be served concurrently with each other. The term of imprisonment imposed in Count Three is to be served consecutively to the terms of imprisonment imposed in Counts One and Two.

The defendant is ordered to stand committed until the fines are paid or he is otherwise discharged by due course of law.

Credit towards the sentence is to be given for any time spent in jail in relation to this case.

/S/ Juan M. Perez-Gimenez March 7, 1986

B.

UNITED STATES DISTRICT COURT FOR

THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA vs.

DEFENDANT BRUCE TAYLOR

Docket No. Cr. 85-321-02 (PG)

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government the defendant appeared in person on this date March 07, 1986

X WITH COUNSEL Clyde Taylor and Fernando Carlo Gorbea

There being a verdict of X GUILTY. Defendant has been convicted as charged of the offense(s) of conspiracy to possess with intent to distribute cocaine, a Sch. II Narcotic Drug Controlled Substance, in violation of Title 21 USC § 846, 952(a), 841(a)(1) as charged in Count One; aid and abet to import cocaine, a Sch. Narcotic, in

violation of Title 18 USC § 2 and Title 21 USC § 952(a) as charged in Count Two of the indictment; and aid and abet in the possession with intent to distribute cocaine, a Sch. II Narcotic, in violation of Title 18 USC § 2 and Title 21 USC § 841(a) as charged in Count Three of the indictment.

The Court asked whether defendant had anything to say why judgment should not be announced. Because no sufficient cause to the contrary was shown or appeared to the Court the Court adjudged the defendant guilty as charged and convicted and ordered that The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of fifteen years (15) in Count One and fined the sum of $20,000; for a period of fifteen (15) years in Count Two; and for a period of twenty (20) years in Count Three and fined the sum of $20,000. Only the terms of

imprisonment imposed in Counts One and Two are to be served concurrently with each other. The term of imprisonment imposed in Count Three is to be served consecutively to the terms of imprisonment imposed in Counts One and Two.

The defendant is ordered to stand committed until the fines are paid or he is otherwise discharged by due course of law.

Credit towards the sentence is to be given for any time spent in jail in relation to this case.

/S/ Juan M. Perez-Gimenez March 7, 1986